IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4575 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FOOD CORPORATION OF INDIA

Versus

WORKERS WORKING IN FCI EMPLOYEES ASSOCATION

Appearance:

MR NAVIN K PAHWA for Petitioner

MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision:22/07/1999

C.A.V. JUDGEMENT

Since the affidavit has been exchanged by the parties, with the consent of learned counsel for the parties this writ petition is proposed to be finally disposed of at the admission stage.

2. The brief facts on which the present petition is filed are as under:-

3. The petitioner Corporation which is a Body

Corporate under the Food Corporation of India Act and the respondent Union entered into a Memorandum of Settlement on 23.3.1989 and a memorandum of understanding on 14.1.1989 regarding revision of pay scale and allowances for category III and IV employees of the Food Corporation of India. Clause (25) of the said memorandum of understanding deals with cash handling allowance and clause (30) deals with hardship allowance vide Annexure-A to this petition. According to this memorandum of understanding only specified categories of employees mentioned therein are entitled for hardship allowance and cash handling allowance. Despite the fact that the memorandum of understanding is binding on the respondents their Union raised demand of hardship allowance and cash allowance. Industrial Tribunal, Ahmedabad, accepted the reference. The Industrial Tribunal gave an award on 23.7.1997 against the petitioner which was received by the petitioner on 23.3.1999 along covering letter dated 18.3.1999. The said award has been challenged in this writ petition on the ground that in terms of memorandum of understanding dated 14.1.1989 which is binding on both the parties, the respondents are neither entitled to cash handling allowance nor hardship allowance.

4. In the counter affidavit it has been stated that the award is in accordance with law and also in accordance with memorandum of understanding and there has been no illegality in the same, hence the writ petition is liable to be dismissed.

5. Learned counsel for the respondent contended that there is no illegality or perversity in the award, hence this writ petition is liable to be dismissed and the High Court will not interfere with the award. It is true that the High Court will not sit as court of appeal over the award under challenge. However, it can be seen whether the award has been passed keeping in view of the memorandum of understanding entered into between the parties on 14.1.1989 which is obviously binding on the parties.

6. In E.I.D. Parry Ltd. Vs. Industrial Tribunal, 1977 I LLJ 276 also there was subsisting settlement between the management and the workmen touching the question of gratuity. Gratuity was also considered to be pensionary benefit. A reference touching pension was sought to be made on the motion of the workmen. Since the settlement was subsisting and competent it was held that if the workmen want that pensionary benefits be adjudicated upon they must first get the settlement terminated according to law and then can seek a

reference. Therefore the Madras High Court has held that so long as the settlement between the management and the workmen is subsisting the parties are bound by it and if any dispute touching the matter covered under the mutual settlement is sought to be referred it is pre-condition to get such settlement cancelled first and then make a reference.

7. In Management of Northern India Theatres Vs. Presiding Officer, Labour Court, Delhi 1975 I. LLJ 235 also same view was taken by the Delhi High Court regarding binding effect of mutual settlement between the management and the workmen.

8. Learned counsel for the respondent also agreed that the memorandum of understanding is binding on the parties. If this is so then the it is to be examined whether the award has been rendered in the light of the agreement contained in the memorandum of understanding.

9. So far as cash handling allowance is concerned the relevant provision is to be found in para 25.1 of the memorandum of understanding. Para 25.1 provides as under:

"Employees who are required to handle the cash will be paid special pay with effect from 1.10.1986 at the following rates.

(a) Upto rupees one lakh Rs. 50/- p.m.

(b) Over rupees one lakh
and upto rupees five lakhs Rs. 75/- p.m.

(c) Over rupees five lakhs Rs. 85/- p.m.

Assistant Cashier Rs. 40/- p.m.

Category IV employees assisting
the Cashier Rs. 25/- p.m.

10. The impugned award on this point provides as under:

"Therefore, it is ordered to pay cash handling allowance from 1.10.1986 to the employees who are working in different depots and Regional Office of the First party as per provisions of the M.O.U."

11. It is therefore clear that so far as cash

handling allowance is concerned, it was awarded by the Tribunal as per the provisions of the memorandum of understanding. Provisions of memorandum of understanding on the above point had been quoted above. In view of this, I am unable to accept the contention of the learned counsel for the petitioner that only officials handling cash like Cashier and Assistant Cashier are entitled to cash handling allowance and that the officials holding petti amount of their office are not entitled to this allowance. The concept of holding petti amount in the hands of officials was not in the mind of the parties when the memorandum of understanding was executed in the matter. Consequently, neither this court nor the Industrial Tribunal could have imported something beyond para 25.1 of the memorandum of understanding. This part clearly mentions that Assistant Cashier is entitled to cash handling allowance at the rate of Rs. 40/- per month. Even Class IV employees assisting the cashier are entitled to cash handling allowance of Rs. 25/- per month. Other categories of employees holding cash upto rupees one lakh are entitled to cash allowance at the rate of Rs. 50/- per month and those handling cash over rupees one lakh and upto rupees five lakhs are entitled to cash handling allowance at the rate of Rs. 75/- per month and those handling cash over rupees five lakhs are entitled to Rs. 85/- per month. The award has been passed in view of this provision. Consequently, the concept of persons holding petti cash are not entitled to cash allowance cannot be accepted as suggested by the learned counsel for the petitioner. Thus, the award so far as it grants cash handling allowances to employees according to the provisions of the memorandum of understanding is strictly in accordance with agreement and it suffers from no illegality or perversity, hence this portion of the award does not require interference.

12. The second dispute is regarding hardship allowance. In the award hardship allowance has been awarded to employees who have worked in CAP complexes at Ranip, Viramgam, Tragad and Mehmadabad as per the provisions of the memorandum of understanding with effect from 1.10.1986. This portion of the award has been seriously challenged by the learned counsel for the petitioner and in my opinion, the challenge has to be accepted.

13. Grant of hardship allowance in CAP storage in isolated out of way open storage units/airstrips is mentioned in clause (30) of the memorandum of understanding. Clause (30.1) provides that the employees posted at Airstrips and isolated CAP complexes notified

by the Corporation from time to time will be paid hardship allowance with effect from 1.10.1986 at the rates given therein, namely, that for category IV Rs. 65/- per month, for Assistant Grade III Rs. 70/- per month, for Assistant Grade II Rs. 90/- per month, for Assistant Grade I Rs. 120/- per month. It is further provided that this allowance would not be paid when other special compensatory allowance is being paid.

14. It is therefore clear that the employees who are posted at Airstrips and isolated CAP complexes notified by the Corporation from time to time are entitled to hardship allowance. Unless a particular Airstrips or isolated CAP complexes has been notified by the Corporation, the employees posted at such Airstrips and isolated CAP complexes cannot claim hardship allowance. This is clear from the agreement itself and no violation of right or discrimination can be alleged by the employees posted at Airstrips and isolated CAP complexes or anywhere else which is not notified by the Corporation. Notification by the Corporation of Airstrips and isolated CAP complexes is a condition precedent for grant of claim of hardship allowance. The learned counsel for the petitioner has rightly pointed out from the Annexures that there are guidelines issued by the Department as to how notifications are to be made by the Corporation regarding Airstrips and isolated CAP complexes where hardship allowance is to be granted. Those guidelines are contained in Annexure-D to the writ petition. Proforma is also attached with Annexure-D for seeking information and on receipt of information certain places are notified by the Corporation for grant of hardship allowance. For such declaration, name of the CAP complex, capacity of CAP complex, quantity of foodgrains stored, the date from which the storage at CAP complex has been started, the date by which the CAP storage is expected to be liquidated, number of employees posted and position regarding the availability of necessary amenities in the area like electricity, water, housing and transport facilities are collected and after collecting such information and keeping in view the guidelines in Annexure-D that necessary notification is issued by the Corporation. Learned counsel for the petitioner contended that three complexes have been subsequently notified by the Corporation whose employees are entitled to hardship allowance and four complexes have not been so notified keeping in view the information received on the relevant proforma. The action of the respondent in not declaring the CAP complexes at Ranip, Viramgam, Tragad and Mehmadabad therefore cannot be termed as arbitrary nor it can be termed as contrary to

clause (30) of the memorandum of understanding.

15. The Industrial Tribunal at page 103 of the award has discussed the question of grant of hardship allowance. It is observed that hardship allowance is sanctioned from 1.10.1986 to Marida, Khajadia and Than. However, hardship allowance is not sanctioned to Ranip, Viramgam, Tragad and Mehmadabad. The Tribunal proceeded to observe that these places are little more near Gam city but such godowns are in open and like other open complex the workers have to work. So when employees at other open godowns are doing same work and getting hardship allowance, there should not be discriminatory policy in not giving hardship allowance to employees working at the same type or depot for storage and unloading of foodgrain. It further proceeded to discuss the matter as is it was deciding the validity of the memorandum of understanding. It had also observed that hardship allowance cannot be denied merely because it is not notified by the Corporation. In my opinion, at this juncture, the Industrial Tribunal has acted contrary to law as well as illegally inasmuch as it was not within the jurisdiction of the Tribunal to go into the merits of the settlement and to ignore the condition precedent that unless a particular complex is notified by the Corporation, hardship allowance cannot be paid to the employees who stay there. A Division Bench of this court in Gandhidham Nagarpalika Vs. R.C. Israni, 1992 Lab. I.C. 2236 has held that the Tribunal cannot travel beyond the charter of demand and terms of settlement. It was likewise held that the Tribunal could not have examined fairness, justness and reasonableness of the settlement.

16. I do not find any force in the contention of the learned counsel for the petitioner that the respondents should have availed of alternative remedy provided in the memorandum of understanding. The case of Ballarpur Industries Ltd. Vs. Presiding Officer, Labour Court, 1995 (1) LLJ 184 is not applicable to the facts of the case. There is no merit in the contention that the respondents should have approached the Anomaly Committee under para 6 of the memorandum of understanding. Actually the respondent workers are not seeking clarification regarding anomaly in the fixation or revision of pay scale. On the other hand they are claiming hardship allowance which was given to employees to other three complexes which were notified by the Corporation.

17. In the result, the portion of the award granting

hardship allowance to the employees of the respondent workers of the Food Corporation of India is contrary to law as well as illegal. This portion of the award has, therefore, to be quashed.

In light of the above discussion, the petition partly succeeds. The first part of the award granting hardship allowance to the workers posted in CAP complexes at Ranip, Viramgam, Tragad and Mehmadabad with effect from 1.10.1986 is quashed. The second part of the award granting cash handling allowance to the employees is maintained. In the facts and circumstances of the case, no order as to costs.

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